IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 668 of 2001

in

SPECIAL CIVIL APPLICATIONNo 2476 of 2001
and
C.A. No.7691/2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHESH T RABARI

Versus

DIRECTOR OF PRIMARY EDUCATION

Appearance:

MR NEHAL GANDHI for MR MUKESH PRAJAPATI for Appellant

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE N.G.NANDI

Date of Order: 25/07/2001

ORAL JUDGMENT

(Per : MR.JUSTICE M.R.CALLA)

This Letters Patent Appeal is directed against the order dated 11th April 2001 passed by the learned Single Judge whereby Special Civil Application has been rejected.

2. The original petitioner and the appellant herein was appointed pursuant to an advertisement whereby applications were invited from persons possessing the qualifications in Agricultural Trade though the Trade Instructor was required to be appointed for Computer training. The interviews were held on 17th Aug.2000. The Selection Committee recommended the name of the petitioner-appellant and on the basis of the recommendations, he was appointed in Shri S.H.Modi Training College for Men, Ranuj Taluka, Dist. Patan. This institution gets grant from the Government and the Government was required to ensure that only qualified and eligible persons are appointed in this institution. The appointment given to the appellant - petitioner was not found to be in order by the Jt. Director and the Jt.Director found that the appointment of the appellant herein and the original petitioner was absolutely arbitrary and illegal inasmuch as, he did not possess any qualification whatsoever in Computer training and accordingly the termination order dated 21st Oct.2000 was passed against the petitioner whereby his services were terminated with effect from 30th Nov.2000.

3. Special Civil Application No.11609 of 2000 was preferred challenging the aforesaid order dt.21st Oct.2000 and this Special Civil Application was decided on 29th Nov.2000. The Court found that no reasonable opportunity had been given by the respondent institute to the petitioner before passing the adverse order and therefore the termination order dt.21.10.2000 was stayed before it could become effective from 30.11.2000 and the appellant was directed to approach the higher authorities within a period of 10 days from the date of the order, i.e. 29th Nov.2000. The representation was directed to be considered and decided by the respondents in accordance with law after affording reasonable opportunity to the appellant within a period of three weeks thereafter. The Court, while passing the order dated 29th Nov.2000 had stayed the termination order till the final decision that may be given by the respondent

no.1. It was further ordered that in case any adverse order is passed against the appellant, he shall be entitled to challenge the same before the appropriate forum and in that situation, the respondent no.1, i.e. the Director of Primary Education shall make a suitable endorsement staying the implementation of his order for a further period of 10 days from the date of communication of such adverse order to the petitioner. Special Civil Application No.10609 of 2000 was disposed of accordingly.

4. The appellant - petitioner submitted his representation dated 5th Dec.2000 addressed to the Director, Primary Education, copy of which has been annexed with the Special Civil Application as Annexure.E. The Principal of the Institute forwarded the said representation on 8th Dec.2000. It appears that a communication dated 27th Dec.2000 was sent to the petitioner by the office of Director, Primary and Secondary Education, informing him that he was required to make a representation within 10 days from the date of the decision of the Court and in case no representation is received, appropriate action shall be taken. On 9th Jan.2001, the appellant sent a letter to the Director, in reply to this letter dated 27th Dec.2000 mentioning therein that he had already submitted the representation dated 5th Dec.2000 and the same had also been forwarded on 8th Dec.2000 by the Principal of the Institute and the same had been handed over in the office of the Director on 12th Dec.2000. Learned Counsel for the appellant has invited our attention to the endorsement below this letter dated 9th Jan.2001 as had been made by the Principal of the Institute on 10th Jan.2001 in which the Principal has mentioned that the appellant's representation dated 5th Dec.2000 had been forwarded on 8th Dec.2000 and had been handed over in the office of the Director on 12th Dec.2000. The appellant has submitted that yet a communication dated 15th Jan.2001 was sent to him by the office of the Jt.Director stating therein that he was required to make a representation within 10 days but no representation had been received and therefore, he may yet make the representation within 7 days and in case no representation is received even within this extended period, the action will be taken accordingly. The appellant then sent another letter dated 24th Jan.2001 reiterating his stand that he had already made a representation on 5th Dec.2000 followed by yet another representation dated 9th Jan.2001. The Principal of the Institute had also sent a letter dated 25th Jan.2001 to the Jt.Director, Primary Education, mentioning therein about the appellant's representation dated 5th Dec.2000 and yet another representation dated

9th Jan.2001 forwarded on 8.12.2000 and 10th Jan.2001 respectively and that these representations had been delivered in the office of the Director on 12th Dec.2000 and on 11th Jan.2001 respectively. However, the Directorate passed the order on 28th March 2001 holding that under the Gujarat Educational Institutions (Pre-primary and Primary Education Training College) Rules, 1984, the appointment of the appellant was not in order for five reasons mentioned in the order dated 28th March 2001. Against this order dated 28th March 2001, the present Special Civil Application out of which this L.P.A. has arisen was preferred by the appellant and the same was rejected by the learned Single Judge on 11.4.2000.

5. Learned Counsel for the appellant has assailed this order dated 11th April 2001 passed by the learned Single Judge and the order dated 28th March 2001 passed by the Jt.Director, Primary Education. His main grievance is that although the representation dated 5th Dec.2000 made by him had been duly received in the Directorate on 12.12.2000 as forwarded by the Principal of the institute and the second representation dt.9.1.2001 had also been received on 11th Jan.2001 as forwarded on 10.1.2001 and it is proved on the basis of the documentary evidence placed on record that such representations had been received in the office of the Directorate, the same do not find any reference in this order dated 28th March 2001 and that the order dated 28th March 2001 has been passed without considering the appellant's representations which had been duly received much before 28.3.2001 the date on which the order was passed and that his representation dt.5.12.2000 was within the period of ten days as required under Court's order dt.29.11.2000 passed in Spl.C.A. No.11609/2000.

6. We have gone through the order dated 28th March 2001. It is of course true that in this order dated 28th March 2001, there is no reference to the representations dated 5th Dec.2000 or dt.9.1.2001 as are claimed to have been made by the appellant. We fail to understand that had these representations dt.5.12.200 and 9.1.2001 been received in the office of Directorate, where was the question of writing letters to the appellant by the Directorate on 27.12.2000 and again on 15.1.2001 that he was required to make the representation within 10 days and that he may make the same even now within seven days. Be that as it may, without entering into this controversy, we proceed on the basis that these representations had been delivered in the office of the Director and yet while passing the impugned order

dt.28.3.2001 the same were not taken note of by the Director. Even then we find that as a matter of fact, the actual grievance of the appellant-petitioner has been duly considered by the author of the impugned order which is apparent from the detailed order with reasons passed by him. May be that the representation as such has not been dealt with and it appears that under some mistaken belief or for some communication gap, even after the date which is shown to be the date of receipt of the representations in the Directorate, letters were sent to the appellant more than once on 27.12.2000 and 15.1.2001 that he had not filed the representation within the time specified by the Court, i.e. within a period of 10 days and such letters had also been replied by the appellant as claimed by him, the facat of the matter is that the reasons which have been given while passing the order dated 28th March 2001 takes care of all the grounds of grievance as were sought to be raised by the appellant. It has been mentioned in the order dated 28th March 2001 passed by the Jt.Director, Primary Education that instead of considering the qualifications in the subject of Computer, the qualifications in the subject of Agriculture were taken into consideration. In this regard, (i) even if it is assumed as has been submitted on behalf of the appellant that after his appointment, he had taken the training in Computer, as has been stated in para 15 of the representation, the same is of no consequence because that would not enure any benefit to the appellant with regard to the requisite qualifications at the time of his appointment so as to render an invalid order of appointment to be valid. (ii) The post in question was to be filled in according to the Roster and the same was to be filled in by a physically handicapped candidate, but it was made use of by the appellant who was not a physically handicapped candidate and thus, the Roster was not followed. (iii) No list of eligible candidates who were registered with the Employment Exchange was called for. (iv) As a matter of fact, the advertisement and the selection itself was to be declared invalid as there was no eligible candidate available at the time of interview including the present appellant and the appellant did not possess the requisite qualifications. (v) The advertisement itself did not mention the requisite qualification properly. How the qualification in Agricultural Trade could be mentioned for the post of Trade Instructor in Computer Training?

7. The grounds as have been mentioned in detail in the order dated 28th March 2001 passed by the Jt.Director of Primary Education have been considered by the learned Single Judge and the learned Single Judge has

categorically observed that the facts stated in the impugned order (dated 28th March 2001) are so eloquent that even if it is accepted that hearing was not afforded to him, the same is of no consequence and would not have made any difference. In any view of the matter, now that a detailed order has been passed by the Jt.Director with reasons, and it is established that the appellant did not possess the requisite qualifications for appointment on the post in question as on the date of selection and appointment, the order dated 28th March 2001 cannot be declared to be illegal or invalid and cannot be set aside merely because it does not make a specific reference to the appellant's representation dated 5th Dec.2000 more particularly when it is established from the record that in fact the appellant did not possess the requisite qualifications on the date of appointment and we find that even if the appellant had acquired some training in the subject of Computer later on, that cannot be a substitute to the requirement of the prescribed qualifications and on that basis the initial appointment order cannot be held to be valid. The appointment given to the appellant herein was thus not only illegal but unconstitutional and violative of Art. 14 and 16 of the Constitution of India, against all norms to the total exclusion of the candidates having requisite qualification who could apply and get considered, had the correct qualification been mentioned in the advertisement. The termination order
was therefore found to have been rightly passed. There is no infirmity or error in the order passed by the learned Single Judge so as to warrant any interference by this Court. There is no substance in this Letters Patent Appeal. The same is hereby dismissed. No order as to costs.

8. We have decided this Letters Patent Appeal on merits and we have found that the Special Civil Application has been rightly rejected, the appellant's appointment was illegal. However, learned Counsel for the appellant submits that he should not be deprived of the salary for the period for which he worked, may be under the interim orders of the Court. It is observed that should the appellant make any representation in this behalf for the salary for the period for which he has worked after termination order on the strength of interim orders, before the concerned authorities, the same shall be considered and decided on the principle of 'Pay against work' in accordance with law and as expeditiously as possible but in no case later than a period of two months from the date of the receipt of such representation.

9. Whereas the main Letters Patent Appeal itself has been dismissed, there is no question of any stay in the stay application. The Civil Application for stay stands rejected accordingly.

25th July 2001 (M.R. Calla, J.)

(N.G. Nandi, J.)

Sreeram.